

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 767/JP/2024  
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Harish Kumar Garg 01, Adarsh Colony, Kishangarh Bas Alwar	बनाम Vs.	The ITO Ward- 1 (1) Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXMPG 9563 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar, Advocate  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 18/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10/07/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 03-05-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2013-14 raising therein following grounds of appeal.

“1. In the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 19,01,000/- u/s 69A of the Income Tax Act, 1961 by the treating the cash deposited in the bank accounts of the assessee as unexplained cash credits.

2. In the facts and circumstances of the case the Learned CIT(A) has erred in not considering the reply of the assessee that the cash deposited

in the bank account of the assessee is pertaining to the sales of the assessee which has been duly reflected in the regular books of accounts.

3. In the facts and circumstances of the case the Learned CIT(A) has erred in not giving the benefit peak credit by not considering the submission of the assessee

2.1 Apropos Ground Nos. 1 to 3 of the assessee, the facts as emerges from the order of the ld. CIT(A) who has dismissed the appeal of the assessee by observing as under:-

### 5. Decision

5.0 The only issue involved in this appeal is addition of Rs.1901,000/- u/s 69A of the I.T. Act.

5.1 As per the assessment order, the assessee has made cash deposit of Rs. 19,01,000/- in his bank account maintained with Axis Bank during the F.Y. 20112- 13. The AO concluded that the cash book has been made horridly after receiving the notice u/s. 148 of the Act as on afterthought. The assessee has not provided any vouchers or bills or ledgers that substantiates his claim that the assessen has actually conducted the business and the cash deposits is actually used for his business activity. Hence, cash deposit amounting to Rs. 19,01,000/- is added to the total income of the assessee as unexplained cash credit u/s. 60A r.w.s. 115 BBE of the Act.

5.2 During the course of appellate proceedings, it is submitted that the assessee is an individual and is engaged in retail trading of building material in his proprietary concern M/s. Garg Building Material. Since the gross turnover for the year under consideration was not substantial and accordingly, opted for section 44AD of the Act and has filed return of income declaring total income of Rs. 1,89,150/- with regard to the source of cash deposit in bank during the course of reassessment proceedings, it was submitted that such cash deposits are accumulation out of cash sales of goods and beside the withdrawals made in cash from time to time.

5.2.1 Further, with regard to the cash deposited of Rs. 19,01,000/- in saving bank account with axis bank as submitted above that year under appeal was First year of business of the assessee and assessee used to purchase and sale goods from his saving bank account and accordingly, cash was withdrew from his bank account and deposited time to time sales of goods, and as such total cash was deposited at Rs 19,01,000/- and total cash was withdrawn at Rs. 14,79,100/- and there is month on month cash deposit and cash withdrew from bank account which is also evident from bank statement and cash book

5.3 I have gone through the grounds of appeal, statement of facts, assessment order and the submissions of the appellant. It is seen from the computation of income that the appellant had shown gross receipts/turnover of Rs. 19,50,000/-. Along with submission, the appellant had filed the copy of the cash book and peak working. But not filed the profit and loss account, balance sheet or capital account. There are no sundry creditors and sundry debtors. The appellant neither produced the purchase register or sales register. Without these registers how the appellant had arrived for the gross receipts/turnover at Rs. 19,50,000/- The case was reopened on the basis of the deposit made in the bank account and to verify the sources for the time deposit. The AO has to verify the sources for the deposit and the burden of proof lies on the appellant to establish the genuineness of the deposits in the bank account. The appellant had not filed any document to establish that he had undertaken the business for the year under consideration. During the scrutiny assessment, if he is taking a plea that he is doing business, he has to fig nature of business, sufficient evidence of purchases and sales, vouchers thereof, trading/business license issued by local authority, place of business etc. to substantiate his claim. In the absence of some basic proof of doing business possible to accept the cash deposits in bank as business receipts and benefit of Section 44AD. Appellant not filed any such evidence to prove that he was actually doing some business during the assessment. He has not filed any such evidence either as part of SOF or written submissions during the appeal proceedings. The appellant had not filed any documentary evidence to establish that he had undertaken the business during the year under consideration and the cash deposits are nothing but receipts/turnover of the business. In

these circumstances and in view of the forgoing facts, I am of the opinion that no interference is required in the assessment order. Hence, the addition is upheld. Ground No. 2 of this appeal is dismissed.

6. Ground No. 1 is general in nature and no separate adjudication is required. Ground No. 3 is with regard to the invoking the provisions of sec. 115 BBE of the IT Act. The appellant neither offer proper explanation /nor supporting evidences in respect of his claim which compelled the AO to made the addition u/s. 69 A of the IT Act. Since, the addition in assessment order has been made under sec. 69 A of the Act, the appellant is liable to pay the consequent taxes and cannot refrain himself from paying the tax liability u/s 115BE of the IT Act. Hence, this ground of appeal is also dismissed.

2.2 During the course of hearing, the ld. AR of the assessee submitted that the assessee is an individual and engaged in the business of supply of Building Materials. This was the first year of assessee's business and total income computed u/s 44 AD was below taxable limit and, therefore, no return of income was filed. In the case of the assessee, proceedings u/s 147 were initiated by issuance of notice u/s 148 dated 16/03/2020. Copy of notice u/s 148 so issued is available on **Paper Book Page No. 1**. In response to notice under section 148 of the Act, Assessee filed the ITR vide Ack. no. 447199230070820 on 07/08/2020 declaring total income at Rs. 189150/-. A copy of the return of income so filed along with computation of income is available on **Paper Book Page No2-6**. Subsequently, the AO issued notice u/s 143(2) and 142(1) along with queries. In response to the notice u/s 142(1), the assessee stated the he is carrying

on the business of supply of building materials and the cash deposits made in the bank account are out of his receipts from the business of supply of building materials. The assessee submitted that the deposits in the bank account were out of receipts from business and withdrawals from the bank account were as per business requirements . However, the AO did not accept the submissions of the assessee and completed the assessment on 22.09.2021, determining the total income at Rs. 19,01,000/-, inter-alia, making an addition of Rs. 19,01,000/- u/s 69A of the Income Tax Act, 1961 by the treating the cash deposits in the bank accounts of the assessee as unexplained cash credits. Hence, the action of the AO in treating the cash deposits as unexplained cash credits and making the impugned addition is illegal, unlawful and unjust. The ld. AR further submitted that the assessee preferred appeal before the ld. CIT(A) who without appreciating the facts of the case and submissions of the assessee, dismissed the appeal of the assessee, vide appellate order dated 03/05/2024 and confirmed the addition made by the AO.

2.3 On the other hand, the ld. DR vehemently refuted the arguments of the ld. AR of the assessee and relied upon the order of the ld. CIT(A).

2.4 The Bench has heard both the parties and perused the materials available on record. As regards the Ground No. 1 of the assessee, it is noted from the records that the assessee is an individual and engaged in the business of supply of Building

Materials. Since this was the first year of the assessee's business and total income computed u/s 44 AD was below taxable limit therefore, the assessee did not file return of income u/s 139(1). In response to notice u/s 148 of the Act, return of income was filed declaring total income of Rs. 1,89,150/-, including business income of Rs. 175500/- declared u/s 44 AD on gross receipts/turnover of Rs. 19,50,000/-. With regard to the source of cash deposits in the saving bank account of the assessee, the assessee submitted that such cash deposits are out of cash sales of goods made from time to time and the withdrawals from the bank account were also made for making purchase of goods. In support of the arguments, the assessee furnished bank statement along with cash book (PB 7-8, 9 & 15-25) to substantiate that the cash deposits are not unexplained in any manner. The AO did not accept the submissions of the assessee and citing three minor inconsistencies in the cash book, he treated the cash deposits as unexplained and added the same u/s 69 A as unexplained cash credits. In this regard, it is submitted that the AO has grossly erred in making the addition u/s 69A as unexplained cash credits. First of all, it may be noted that unexplained cash credits are added under section 68 of the IT Act, 1961 and not under Sec. 69 A. Further, Sec. 69 A are not applicable to the case of the assessee. The provisions of Sec. 69 A are quoted below :-

***Unexplained money, etc.***

***69A.*** Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and

*such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

The perusal of the aforesaid provisions reveal that it is attracted and applicable only in case assessee is found to be the owner of any money, bullion, jewellery or other valuable article. In the case of the assessee, the AO has applied this section on the cash deposits made by the assessee, which have been treated as money found and owned by the assessee. It is noted that transactions in bank or entries in the bank account cannot be considered as money owned by the assessee unless at the time of assessment, such money remained deposited in the bank. In the case of the assessee, the money did not remain lying in the bank account. In fact, the cash deposits were out of sale proceeds of assessee's small business of building material and cash withdrawals made were for purchasing goods. The closing balance as on 31/3/2013 is only of Rs. 1,68,329/-. Therefore, the AO was not justified in holding that assessee was found owner of money to the extent of additions made of Rs. 19,01,000/-. Hence, addition made u/s 69 A is unlawful and deserves to be deleted. The Bench draws strength from following case-laws in its support :-

**1. DURGA KAMAL RICE MILLS vs. COMMISSIONER OF INCOME TAX**  
**HIGH COURT OF CALCUTTA**  
(2003) 183 CTR 0223, (2004) 265 ITR 0025, (2003) **130 TAXMAN 0553**

Section 69 A deals with unexplained moneys of which the assessee is found to be the owner. The material difference between section 68 and 69 A is that section 68 does not require that the amount is to be owned by the assessee. It only deals with any amount shown in the books of account of the assessee where section 69 A deals with money etc. owned by the assessee and found in his possession. Therefore, ownership is one of the considerations when the matter comes under section 69A.

**2. COMMISSIONER OF INCOME TAX vs. K.T.M.S. MAHAMOOD  
HIGH COURT OF MADRAS**

(1997) 140 CTR 0282, (1997) 228 ITR 0113, (1997) 92 TAXMAN 0169

In order to make the assessment under s. 69A for undisclosed income, the assessee must not only be a person, who is in possession of the undisclosed income, but he should also be the owner of the same.

**3. ASSISTANT COMMISSIONER OF INCOME TAX vs. JOTINDRA  
STEEL & TUBES LTD. IN THE ITAT DELHI BENCH 'C'(2022) 64  
CCH 0042 DelTrib**

(2022) 94 ITR (Trib) 0359 (Delhi) - Held that since no real money was found to be in possession and there was no mention of any name in seized document, impugned addition was merely based on presumption and was to be deleted.

In view of the above facts, circumstances and case laws mentioned hereinabove, the Bench feels that the AO, has erred in making the addition of Rs. 19,01,000/- u/s 69 A and the ld. CIT(A) has also erred in confirming the addition without appreciating the facts of the case in proper footing. Thus the Ground No. 1 of the assessee is allowed.

2.5 As regards the Ground No. 2 of the assessee (supra), it is noted that the assessee is a very small businessman dealing in supply of building material. This was the first year of business of the assessee. Since he was not sure

about the future prospects of the business therefore, the business transactions were made through his savings bank maintained with Axis Bank Limited, wherein the assessee used to deposit the cash accumulated against sale of goods. Likewise, cash was withdrawn from the saving bank account from time to time for purchase of goods. These facts are evident from the copy of savings bank account No.912010032366122 maintained with Aix Bank. A copy of the bank account with Axis Bank is available on **Paper Book Page No. 7-8**. Later on, with the passage of time, the business of the assessee grew well and, therefore, he opened a separate current bank account with Oriental Bank of Commerce in the name of his proprietorship concern, M/s Garg Building Material. Copy of this current account with Oriental Bank of Commerce is available on **Paper Book Page No. 9**. From the copy of saving bank account with Aix Bank, it is seen that there was cash deposits on various dates during the financial year 2013-14, which represent sale proceeds received by the assessee. Likewise the withdrawals made are also for purchase of goods and business expenses. In support of the assessee's submission, the assessee furnished bank statement along with cash book to substantiate that cash deposits in the bank account of the assessee are not unexplained in any manner. Copy of cash book is available on **Paper Book Page No. 15-25**. The AO did not appreciate the facts of the case and submissions of the assessee and the evidences produced before him in the form of bank statement, cash book etc, and

treated the cash deposits as unexplained by quoting minor discrepancies in three entries of the cash book vis-à-vis the bank statement and held that the cash book has been prepared hurriedly and it is an after-thought on the part of the assessee. The action of the AO is unjust as the assessee was doing his small business of supply of building materials and the nature and volume of cash deposits in the savings bank account and the subsequent withdrawals made from the bank account clearly establishes that the assessee had deposited small amount of cash representing sale proceeds on various dates and thereafter he withdrew the amount from ATM for making purchasing goods and making payment to the suppliers. The entries in the bank account of the assessee clearly depicts the true nature of business activity of the assessee, but the AO failed to appreciate the facts and rejected the submission of the assessee simply on the basis of minor discrepancies related three entries of cash book. It is noted that without bringing any contrary material on record, the AO Officer is not justified in rejecting the submission of the assessee and treating the cash deposits as unexplained. It is further observed that the assessee being a small trader supplying building materials and there being no taxable income, no return of income was filed. In the return filed u/s 148, income from business has been declared under section 44 AD. The assessee has not maintained regular books of account as his case is covered under Sec. 44 AD. Therefore, the AO was not justified in rejecting the submission of the

assessee and making the impugned addition u/s 69 A treating the cash deposits as unexplained cash credit, particularly when the entire cash deposits as well as withdrawals related to the small-scale business of supply of building materials carried on by the assessee. Being the first year of business, the assessee carried out the business activity through his saving bank account with Axis Bank, but later on, when the business flourished, he opened a current account with Oriental Bank of Commerce as per details given above. It is noted that the AO as well as ld. CIT(A) brushed aside these facts while making the addition and confirming the same. Reliance is placed on the following decisions :-

1. Commissioner of Income Tax Vs. Pal Anand(2010) Hon'ble Punjab and Haryana High Court 48 DTR 0135 (P&H) wherein The Hon'ble Punjab and Haryana High Court held that

"Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8% of the gross receipts itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts".

2. Virendra Kumar Alwar Vs. ITO Ward 1(1), Alwar ITAT, Jaipur Bench in I.T.A.No.1100/JP/2019 in which it is Held that "in such a scenario, where there are cash and other credits in the bank account maintained by the assessee amounting to Rs 11,38,000/- which are less than the gross receipts from diary business so declared by the assessee, we find the explanation offered by the assessee that such deposits are from his diary business as a plausible explanation in absence of anything contrary on record in terms of any other source of income. Our view is fortified by the decision of the Hon'ble Punjab and Haryana High Court decision in case of Surinder Pal Anand.

In view of the facts of the case, submissions made by the assessee and the case laws cited, the bench feels that the has erred in making the impugned addition of

Rs. 19,01,000/- by treating the cash deposits as unexplained cash credit u/s 69 A and the ld. CIT(A) is also not justified in confirming the said addition without appreciating the facts of the case and submissions of the assessee. Thus the Ground No. 2 of the assessee is allowed.

2.6 As regards the Ground No. 3 of the assessee, it is noted that the addition of Rs. 19,01,000/- has been made by the AO by treating the cash deposits in bank account of the assessee as unexplained cash credit u/s 69 A. This addition has been challenged by the assessee as per Ground No. 1 & 2 above. In ground No.3, the alternative submission of the assessee is that the AO was not justified in making addition of the entire amount of Rs. 19,01,000/-, but at the most, the AO should have taken into consideration the peak credit for making the addition. The assessee had submitted a working of peak, which is available on Paper Book Page No. 26-32. As per the peak working, the peak credit works out to Rs.5,91,238/- as on 11/12/2012. There is no dispute that the assessee has made cash deposits as well as withdrawals in the cash book. It is a settled position of law that when there are deposits as well as withdrawals from the cash book, then earlier withdrawal of cash can be considered as source for the subsequent cash deposit. In such circumstances, one has to consider the peak credit balance and such peak credit could only be treated as unexplained and addition can be made to the extent of such peak credit only. The peak working was already furnished before the AO

during the course of assessment proceedings, wherein only daily balance column is added. As stated above, the peak credit works out to Rs. 5,91,238/- as on 11-12-2012. This is only an alternative submission of the assessee as the source of cash deposits is only accumulation out of cash sales of goods and the withdrawals made from bank on regular intervals and, therefore, the addition made by the AO u/s 69 A treating the same as unexplained cash credit deserves to be deleted. Thus Ground No. 3 of the assessee is allowed.

3.0 In the result, the appeal of the assessee stands allowed with no orders as to costs.

Order pronounced in the open court on 10 /07/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /07/2024

**\*Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Harish Kumar Garg, Alwar
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 1(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 767JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar